

1 SENATE BILL NO. 108

2 INTRODUCED BY D. KARY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO LOCAL BOARDS
5 OF HEALTH; REQUIRING THAT CERTAIN RULES, REGULATIONS, AND FEES BE APPROVED BY THE
6 GOVERNING BODY; REQUIRING THAT THE GOVERNING BODY APPROVE THE POWERS AND DUTIES
7 OF A LOCAL BOARD OF HEALTH; REMOVING PENALTIES FOR A LAW ENFORCEMENT OFFICER WHO
8 DOES NOT RENDER SERVICE TO A STATE OR LOCAL HEALTH OFFICER; ALLOWING A LOCAL BOARD
9 OF HEALTH TO ISSUE ORDERS AND BRING ACTIONS FOR NONCOMPLIANCE WITH THE APPROVAL
10 OF THE GOVERNING BODY; PROVIDING A DEFINITION; AMENDING SECTIONS 50-1-101, 50-2-116, 50-2-
11 118, 50-2-120, 50-2-123, 50-2-124, AND 50-2-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
12 DATE."

13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15

16 **Section 1.** Section 50-1-101, MCA, is amended to read:

17 **"50-1-101. Definitions.** Unless the context indicates otherwise, in chapter 2 and this chapter, the
18 following definitions apply:

19 (1) "Communicable disease" means an illness because of a specific infectious agent or its toxic
20 products that arises through transmission of that agent or its products from an infected person, animal, or
21 inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an
22 intermediate plant or animal host, a transmitting entity, or the inanimate environment.

23 (2) "Condition of public health importance" means a disease, injury, or other condition that is
24 identifiable on an individual or community level and that can reasonably be expected to lead to adverse health
25 effects in the community.

26 (3) "Department" means the department of public health and human services provided for in 2-15-
27 2201.

28 (4) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

- 1 (a) in which an infectious agent normally lives and multiplies;
 2 (b) on which an infectious agent depends primarily for survival; and
 3 (c) where an infectious agent reproduces in a manner that allows the infectious agent to be
 4 transmitted to a susceptible host.

5 (5) "Institutional controls" means legal or regulatory mechanisms designed to protect public health
 6 and safety that:

- 7 (a) limit access to or limit or condition the use of environmentally contaminated property or media;
 8 (b) provide for the protection or preservation of environmental cleanup measures; or
 9 (c) inform the public that property or media is or may be environmentally contaminated.

10 (6) "Isolation" means the physical separation and confinement of an individual or groups of individuals
 11 who are infected or reasonably believed to be infected with a communicable disease or possibly communicable
 12 disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to
 13 nonisolated individuals.

14 (7) "Local board of health" or "local board" means a county, city, city-county, or district board of
 15 health.

16 (8) "Local governing body" or "governing body" means:

17 (a) the board of county commissioners that oversees a county local board of health;

18 (b) the elected governing body of a city that oversees a city local board of health;

19 (c) the board of county commissioners and the elected governing body of each city that oversee a
 20 city-county local board of health; or

21 (d) the board of county commissioners of each county and the elected governing body of each city
 22 that oversee a district local board of health.

23 ~~(8)~~(9) "Local health officer" means a county, city, city-county, or district health officer appointed by a
 24 local board of health. With regard to the exercise of the duties and authorities of a local health officer, the term
 25 may include an authorized representative of the local health officer.

26 ~~(9)~~(10) "Local public health agency" means an organization operated by a local government in the
 27 state, including local boards of health or local health officers, that principally acts to protect or preserve the
 28 public health.

1 ~~(10)~~(11) "Physician" has the meaning provided in 37-3-102.

2 ~~(11)~~(12) "Public health services and functions" means those services and functions necessary to
3 promote the conditions in which the population can be healthy and safe, including:

4 (a) population-based or individual efforts primarily aimed at the prevention of injury, disease, or
5 premature mortality; or

6 (b) the promotion of health in the community, such as assessing the health needs and status of the
7 community through public health surveillance and epidemiological research, developing public health policy,
8 and responding to public health needs and emergencies.

9 ~~(12)~~(13) "Public health system" means state and local public health agencies and their public and
10 private sector partners.

11 ~~(13)~~(14) "Quarantine" means the physical separation and confinement of an individual or groups of
12 individuals who are or may have been exposed to a communicable disease or possibly communicable disease
13 and who do not show signs or symptoms of a communicable disease from nonquarantined individuals to
14 prevent or limit the transmission of the communicable disease to nonquarantined individuals.

15 ~~(14)~~(15) "Screening" means diagnostic or investigative analysis or medical procedures that determine
16 the presence or absence of or exposure to a condition of public health importance or the condition's precursor
17 in an individual.

18 ~~(15)~~(16) "Testing" has the same meaning as screening."
19

20 **Section 2.** Section 50-2-116, MCA, is amended to read:

21 **"50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of
22 the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

23 (a) appoint and fix the salary of a local health officer who is:

24 (i) a physician;

25 (ii) a person with a master's degree in public health; or

26 (iii) a person with equivalent education and experience, as determined by the department;

27 (b) elect a presiding officer and other necessary officers;

28 (c) employ qualified staff;

- 1 (d) adopt bylaws to govern meetings;
- 2 (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- 3 (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
- 4 (i) epidemiological tracking and investigation;
- 5 (ii) screening and testing;
- 6 ~~(iii) isolation and quarantine measures;~~
- 7 ~~(iv)(iii)~~ diagnosis, treatment, and case management;
- 8 ~~(v) abatement of public health nuisances;~~
- 9 ~~(vi)(iv)~~ inspections;
- 10 ~~(vii)(v)~~ collecting and maintaining health information;
- 11 ~~(viii)(vi)~~ education and training of health professionals; or
- 12 ~~(ix)(vii)~~ other public health measures as allowed by law;
- 13 ~~(g) protect the public from the introduction and spread of communicable disease or other conditions of~~
- 14 ~~public health importance, including through actions to ensure the removal of filth or other contaminants that~~
- 15 ~~might cause disease or adversely affect public health;~~
- 16 ~~(h)(g)~~ supervise or make inspections for conditions of public health importance and issue written
- 17 ~~orders for compliance or for correction, destruction, or removal of the conditions;~~
- 18 ~~(i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation~~
- 19 ~~of public health laws, rules, and local regulations;~~
- 20 ~~(j)(h)~~ identify to the department an administrative liaison for public health. The liaison must be the
- 21 local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a
- 22 full-time local health officer, the liaison must be the highest ranking public health professional employed by the
- 23 jurisdiction.
- 24 ~~(k)(i)~~ subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent
- 25 than state standards for the control and disposal of sewage from private and public buildings and facilities that
- 26 are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for
- 27 granting variances from the minimum requirements that are identical to standards promulgated by the board of
- 28 environmental review and must provide for appeal of variance decisions to the department as required by 75-5-

1 305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling
2 of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the
3 authorization of the private property owner.

4 (2) With the approval of a majority of the local governing body, Local-local boards of health may:

5 (a) accept and spend funds received from a federal agency, the state, a school district, or other
6 persons or entities;

7 (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private
8 and public buildings and facilities;

9 (c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:

10 (i) for the control of communicable diseases;

11 (ii) for the removal of filth that might cause disease or adversely affect public health;

12 (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that
13 affects public health and for the maintenance of sewage treatment systems that do not discharge effluent
14 directly into state water and that are not required to have an operating permit as required by rules adopted
15 under 75-5-401;

16 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing
17 establishments and that are not less stringent than state standards for tattooing and body-piercing
18 establishments;

19 (v) for the establishment of institutional controls that have been selected or approved by the:

20 (A) United States environmental protection agency as part of a remedy for a facility under the federal
21 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

22 (B) department of environmental quality as part of a remedy for a facility under the Montana
23 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

24 (vi) to implement the public health laws;

25 (d) utilize isolation and quarantine measures to prevent conditions of public health importance;

26 (e) reduce public health nuisances to prevent conditions of public health importance;

27 (f) ensure the removal of filth or other contaminants that might cause disease or adversely affect

28 public health in order to protect the public from the introduction and spread of communicable disease or other

1 conditions of public health importance;

2 (g) issue written orders for compliance or for correction, destruction, or removal of conditions that
 3 have been found to be of public health importance as determined by an inspection provided in subsection
 4 (1)(g); and

5 (h) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation
 6 of public health laws, rules, and local regulations with:

7 (i) the consent of the county attorney; or

8 (ii) the assistance of the state if a county attorney does not provide consent.

9 ~~(d) promote cooperation and formal collaborative agreements between the local board of health and~~
 10 ~~tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,~~
 11 ~~information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters~~
 12 ~~addressed in this title.~~

13 (3) A local board of health may:

14 (a) provide, implement, facilitate, or encourage other public health services and functions as
 15 considered reasonable and necessary; and

16 (b) promote cooperation and formal collaborative agreements between the local board of health and
 17 tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,
 18 information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters
 19 addressed in this title."

20

21 **Section 3.** Section 50-2-118, MCA, is amended to read:

22 **"50-2-118. Powers and duties of local health officers.** (1) In order to carry out the purpose of the
 23 public health system, in collaboration with federal, state, and local partners, local health officers or their
 24 authorized representatives shall:

25 ~~(1)(a)~~ (a) make inspections for conditions of public health importance and, with approval of the local
 26 governing body, issue written orders for compliance or for correction, destruction, or removal of the condition;
 27 and

28 ~~(2) take steps to limit contact between people in order to protect the public health from imminent~~

1 threats, including but not limited to ordering the closure of buildings or facilities where people congregate and
 2 canceling events;

3 ~~(3)(b)~~ report communicable diseases to the department as required by rule;

4 (2) In order to carry out the purpose of the public health system, in collaboration with federal, state,
 5 and local partners, the governing body shall approve the actions of local health officers or their authorized
 6 representatives to:

7 (a) limit contact between people in order to protect the public health from imminent threats, including
 8 but not limited to ordering the closure of buildings or facilities where people congregate and canceling events;

9 (4)(b) establish and maintain quarantine and isolation measures as adopted by the local board of
 10 health; and

11 (5)(c) submit to the county attorney or the attorney general who, exercising appropriate prosecutorial
 12 discretion, may pursue action with the appropriate court if this chapter or rules adopted by the local board or
 13 department under this chapter are violated."

14

15 **Section 4.** Section 50-2-120, MCA, is amended to read:

16 **"50-2-120. Assistance from law enforcement officials.** A state or local health officer may request a
 17 sheriff, constable, or other peace officer to assist the health officer in carrying out the provisions of this chapter.
 18 ~~If the officer does not render the service, the officer is guilty of a misdemeanor and may be removed from~~
 19 ~~office."~~

20

21 **Section 5.** Section 50-2-123, MCA, is amended to read:

22 **"50-2-123. Compliance order authorized.** If a person refuses or neglects to comply with a written
 23 order of a state or local health officer within a reasonable time specified in the order, the state or local health
 24 officer may cause the order to be complied with and, with the approval of a majority of the local governing body,
 25 initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the
 26 order. The action to recover expenses ~~shall~~ must be brought in the name of the city or county as approved by a
 27 majority of the local governing body."

28

1 **Section 6.** Section 50-2-124, MCA, is amended to read:

2 **"50-2-124. Penalties for violations.** (1) A person who does not comply with rules adopted by a local
3 board ~~is~~ may be found guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or
4 more than \$200.

5 (2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the
6 provisions of this chapter or rules adopted by the department under the provisions of this chapter ~~is~~ may be
7 found guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or
8 be imprisoned for not more than 90 days, or both.

9 (3) Each day of violation constitutes a separate offense.

10 (4) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the
11 violation occurs."

12

13 **Section 7.** Section 50-2-130, MCA, is amended to read:

14 **"50-2-130. Local regulations no more stringent than state regulations or guidelines.** (1) After
15 April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board
16 may not adopt a rule under 50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv) that is more stringent than the comparable
17 state regulations or guidelines that address the same circumstances. The local board may incorporate by
18 reference comparable state regulations or guidelines.

19 (2) The local board, on approval of a majority of the local governing body, may adopt a rule to
20 implement 50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv) that is more stringent than comparable state regulations or
21 guidelines only if the local board makes a written finding, after a public hearing and public comment and based
22 on evidence in the record, that:

23 (a) the proposed local standard or requirement protects public health or the environment; and

24 (b) the local board standard or requirement to be imposed can mitigate harm to the public health or
25 environment and is achievable under current technology.

26 (3) The written finding must reference information and peer-reviewed scientific studies contained in
27 the record that forms the basis for the local board's conclusion. The written finding must also include
28 information from the hearing record regarding the costs to the regulated community that are directly attributable

1 to the proposed local standard or requirement.

2 (4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April
3 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may
4 petition the local board to review the rule. If the local board determines that the rule is more stringent than
5 comparable state regulations or guidelines, the local board shall comply with this section by either revising the
6 rule to conform to the state regulations or guidelines or making the written finding, as provided under
7 subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A
8 petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The
9 local board may charge a petition filing fee in an amount not to exceed \$250.

10 (b) A person may also petition the local board for a rule review under subsection (4)(a) if the local
11 board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the
12 state government subsequently establishes comparable regulations or guidelines that are less stringent than
13 the previously adopted local board rule."
14

15 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
17 the part remains in effect in all valid applications that are severable from the invalid applications.
18

19 NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.
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- END -